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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/822,038

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Glen E. Flook

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EXAMINER

LEFF, STEVEN N

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

02/21/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/822,038	Applicant(s) FLOOK ET AL.	
	Examiner STEVEN LEFF	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/8/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

- The disclosure is objected to because of the following informalities: The opening paragraph states the attorney's docket number, and should be replaced with the application number. In addition, the application numbers and status of the related copending US cases is missing. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- Claims 1-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
 - Claims 1, and 4-7 are rejected due to the phrase "character shaped forms" is indefinite as it is unclear as to what is encompassed by "character shaped forms", who is to determine such a form, and how this "character shaped form" differs from other non-desired shapes.
 - Claims 2, and 3 are rejected due to the phrase "character shaped cut-outs" is indefinite as it is unclear as to what is encompassed by "character shaped cut-outs", who is to determine such a cut-out, and how these "character shaped cut-outs" differs from other non-desired cut-outs.
 - Claims 10, 12, 14, 15, 16, 17, and 20 are rejected due to the phrase "snack food forms" is indefinite as it is unclear as to what is encompassed by "snack food forms", who is to determine such a form, and how this "snack food forms" differs from other non-desired forms since the phrase "snack" is a relative term which is dependant upon numerous factors like size, weight, and/or the person thereby consuming.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1794

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heck et al. (5198257) in view of Henson et al. (5558894).

With respect to claims 1-29, Heck et al. teach a method of separating character-shaped forms from a dough (abstract). More specifically Heck et al. teach forming the dough (col. 2 lines 20-25), cutting character-shaped forms in the dough (col. 2 lines 54-59), applying air pressure to partially detach the character-shaped forms from the dough (col. 5 lines 8-14), and routing the dough having the partially detached character-shaped forms across a frictional surface to separate the character-shaped forms from the dough (col. 4 lines 40-46). Heck et al. continue by providing air conduits and holes within the cylindrical cutter underlying each row of character-shaped cut-outs, and applying air pressure into the air conduit and out the holes in the surface of the cylindrical cutter.

However Heck et al. are silent with respect to the use and production of a dual-sheeted dough.

Henson et al. teach a method for forming a puffed food product (abstract). More specifically Henson et al. teach forming a first sheet of dough from an agglomerated mixture (col. 4 line 52-53), forming a second sheet of dough from the agglomerated mixture (col. 4 line 52-53), and combining the first and second sheets of dough to provide a dual-sheeted dough (col. 4 lines 52-53).

Therefore although Heck et al. does not teach the production of a dual-sheeted dough, Heck et al. does teach a method of cutting multi-layered dough (fig. 4), and where Henson et al. teaches forming a first sheet of dough from an agglomerated mixture (col. 4

line 52-53), forming a second sheet of dough from the agglomerated mixture (col. 4 line 52-53), and combining the first and second sheets of dough to provide a dual-sheeted dough (col. 4 lines 52-53), it would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to have combine the teaching of Heck et al. and Henson et al. and taught that the production of a dual-sheeted dough since both Heck et al. and Henson et al. teach the desire to provide a method of providing a filled food product whether it be with an actual filling or with merely air, since Heck et al. teach cutting character-shaped forms in the dough (col. 2 lines 54-59), applying air pressure to partially detach the character-shaped forms from the dough (col. 5 lines 8-14), and routing the dough having the partially detached character-shaped forms across a frictional surface to separate the character-shaped forms from the dough (col. 4 lines 40-46) and where Henson et al. positively teaches dual-sheeted dough for it's art recognized and applicant's intended purpose of producing a hollow food product where providing dual-sheeted dough would allow for the production of a sealed food product on all the edges and/or periphery thereof which has a greater tendency to retain its open shape as is taught by Henson et al. (col. 4 lines 42-47). It would have further been obvious since MPEP 2144.07 states that the selection of a known process based on its suitability for its intended use supports a prima facie obviousness determination, where providing a dual-sheeted dough food product as opposed to the extruded food product of Heck et al. would not provide a patentable feature.

With respect to the limitation of the use of specifically a rotating brush as the frictional surface, since Heck et al. specifically teaches the use of a frictional surface for removing the cut food product, and since all the claimed elements were known in the prior art and one skilled in the art could have substituted the elements with no change in their respective functions, thus yielding predictable results to one of ordinary skill in the art at the time of the invention it would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to have combine the teaching of Heck et al. and Henson et al. and taught the use of specifically a rotating brush.

With respect to the limitation that the frictional surface is adjusted to an angle of about 30 to 40 degrees, although Heck et al. does not teach the specific angle Heck et al. does teach that the frictional surfaces are "tangential to the cylinder" (col. 4 line 41), and "where the general conditions of a claim are disclosed in the prior art, it is not inventive

to discover the optimum or workable ranges by routine experimentation" (see MPEP 2144.04 IIA). Therefore since all the claimed elements were known in the prior art and one skilled in the art could have substituted the elements with no change in their respective functions, thus yielding predictable results to one of ordinary skill in the art at the time of the invention it would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to have combine the teaching of Heck et al. and Henson et al. and taught that the frictional surface is adjusted to an angle of about 30 to 40 degrees.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Leff whose telephone number is (571) 272-6527. The examiner can normally be reached on Mon-Fri 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached at (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/

Primary Examiner, Art Unit 1794

SL